> fro. supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' * * * of a fair and open hearing be maintained in its integrity. * * * The right to such a hearing is one of 'the rudiments of fair play' * * * assured to every litigant by the Fourteenth Amendment as a minimal requirement. * * * There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

Furthermore, this Court has held that the basic constitutional right to sufficient notice and adequate opportunity to defend in a State proceeding is to be protected even where the agency argues that the individual has no defense. *Louisville and Nashville Rd. Co.* v. *Schmidt*, 177 U. S. 230, 239 (1900).

Analogy may be made to the federal decisions holding that the failure to promptly bring an individual to trial is a deprivation of the individual's right to interpose a defense. *Petition of Provoo*, 17 F. R. D. 183 (Dist. Ct. of Md. 1955). In *United States* v. *McWilliams*, 163 F. 2d 695, 696 (Dist. of Col. 1947), the Court stated the underlying reasons for this constitutional requirement as follows:

> "As in all long-delayed cases, the witnesses now are scattered; some are not accessible, more particularly to the defendants who are without funds; the memories of witnesses as to events occurring many years ago are not clear. It is for these reasons among others that the Constitution of the United States requires a speedy trial * * *."

Grievous prejudice to petitioner is obvious. However, prejudice is irrelevant, for the right to reasonable notice and fair opportunity to defend is essential to due process, and courts will not calculate the amount of prejudice its denial entails. *United States* v. *Claudy*, 204 F. 2d 624, 627 (1953).

It would be salutary for this Court to grant certiorari and reaffirm the rule requiring that regulatory agencies abide by the requirements of fairness imposed by the Fourteenth Amendment to the Constitution.

CONCLUSION

For the reasons, stated above, it is prayed that a writ of certiorari issue to review the order of the Court of Appeals of the State of New York.

Respectfully submitted,

EDWARD D. BURNS,
Attorney for Petitioner,
598 Madison Avenue,
New York 22, N. Y.

JOEL S. STERN,
of Counsel.

APPENDIX

Pertinent Portion of the United States Constitution

AMENDMENT XIV.—CONSTITUTION OF THE UNITED STATES

Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Order of Court of Appeals Denying Reargument and Amending Remittitur

STATE OF NEW YORK

In Court of Appeals

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Ninth day of January A. D. 1964.

Present,

Hon. Charles S. Desmond,
Chief Judge, presiding.

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1 Mo. No. 1

In the Matter of the Application of
Henrietta Brod, d/b/a Albert French Restaurant,
Appellant,
for a review &c.,

vs.

Martin C. Epstein, Chairman of the New York State Liquor Authority, and the New York State Liquor Authority,
Respondents.

A motion for a reargument and to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion for reargument be and the same hereby is denied, and it is

Order of Court of Appeals Denying Reargument and Amending Remittitur

ORDERED, that the said motion to amend the remittitur be and the same hereby is granted; return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

> Upon the appeal herein there was presented and necessarily passed upon an alleged question under the Constitution of the United States, viz.; petitioner contended that a delay of four months on the part of the State Liquor Authority in notifying her of an alleged violation of § 65, subd. 1, of the Alcoholic Beverage Control Law was a denial of due process under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that there was no such denial. All concur except Van Voorhis, J., who dissents and votes to deny the motion upon the ground that the constitutional question was not presented by the petition.

AND the Supreme Court of New York County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

GEARON KIMBALL,
Deputy Clerk.

Order of Affirmance by the Court of Appeals

COURT OF APPEALS

STATE OF NEW YORK, ss.:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 21st day of November in the year of our Lord one thousand nine hundred and sixty-three, before the Judges of said Court.

Witness,
The HON. CHARLES S. DESMOND,
Chief Judge, Presiding.

RAYMOND J. CANNON, *Clerk.*

Remittitur November 21, 1963.

No. 279

In the Matter of the Application of
HENRIETTA BRODY, doing business as ALBERT FRENCH RESTAURANT,

Appellant,

for a review &c.,

vs.

MARTIN C. EPSTEIN, Chairman of the New York State Liquor Authority, & ano.,

Respondents.

BE IT REMEMBERED, That on the 28th day of August in the year of our Lord one thousand nine hundred and sixty-three, Henrietta Brody, doing business as Albert French Restaurant, the appellant in this cause, came here unto the Court of Appeals, by Saxe, Bacon & O'Shea, her attorneys, and filed in the said Court a Notice of Appeal and

return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Martin C. Epstein, Chairman of the New York State Liquor Authority, & ano., the respondents in said cause, afterwards appeared in said Court of Appeals by Hyman Amsel, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Joel S. Stern, of counsel for the appellants, and by Mr. Emanuel D. Black, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs. And thereafter motion to amend the remittitur having been granted this remittitur is here amended by adding thereto the following: Upon the appeal herein there was presented and necessarily passed upon an alleged question under the Constitution of the United States, viz.: Petitioner contended that a delay of four months on the part of the State Liquor Authority in notifying her of an alleged violation of § 65, subd. 1, of the Alcoholic Beverage Control Law was a denial of due process under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that there was no such denial.

And it was also further ordered that this records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

Order of Court of Appeals Granting Appellant's Motion for Certificate That a Constitutional Question is Involved Herein

STATE OF NEW YORK,

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Fourth day of April A. D. 1963.

Present,

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

Mo. No. 293

In the Matter of the Application of
HENRIETTA BRODY, d/b/a ALBERT FRENCH RESTAURANT,

Appellant,

for a review &c.,

vs.

MARTIN C. EPSTEIN,
Chairman of the New York State Liquor Authority,
and the New York State Liquor Authority,

Respondents.

A motion having heretofore been made herein upon the part of the appellant for a certificate that a constitutional question is involved on the appeal herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted.

[SEAL]

A copy

GEARON KIMBALL
Deputy Clerk

Order of Court of Appeals Denying Cross-Motion of Respondents to Dismiss Appeal Herein

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Fourth day of April A. D. 1963.

Present,

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

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1 Mo. No. 293

In the Matter of the Application of
HENRIETTA BRODY, d/b/a ALBERT FRENCH RESTAURANT,
Appellant,

for a review, &c.,

vs.

MARTIN C. EPSTEIN, Chairman of the New York State Liquor Authority, and the NEW YORK STATE LIQUOR AUTHORITY,
Respondents.

A cross-motion having heretofore been made herein upon the part of the respondents to dismiss the appeal taken by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said cross-motion be and the same hereby is denied.

A copy

GEARON KIMBALL,
Deputy Clerk.

(SEAL).

Order of Confirmance

At a term of the Appellate Division of the Supreme Court, held in and for the First Judicial Department in the County of New York, on the 6th day of December, 1962.

Present—

Hon. Benjamin J. Rabin,
Justice Presiding,

" Francis L. Valente,
" James B. M. McNally,
" Samuel W. Eager,
" Aron Steuer,
Justices.

5378

In the Matter of the Application of Henrietta Brody, doing business as Albert French Restaurant,

Petitioner,

for a review pursuant to Article 78 of the Civil Practice Act,

vs.

Martin C. Epstein, Chairman of the New York State Liquor Authority, and the New York State Liquor Authority,

Respondents.

The above named petitioner having moved at Special Term of the Supreme Court, New York County, pursuant to Article 78 of the Civil Practice Act, for a review by the court of a determination of the respondent, New York State Liquor Authority, suspending petitioner's restaurant liquor license for a period of 25 days, 15 of which were deferred, after a hearing upon charges; and for other relief,

Order of Supreme Court, New York County, Transferring Proceeding to Appellate Division

And this proceeding having been transferred by order of said court, entered on the 7th day of September, 1962, to this Court for review and determination,

And said proceeding having duly come on to be heard before this Court and having been argued by Mr. Joel S. Stern of counsel for the petitioner, and by Mr. Lawrence Kunin of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the determination of the respondent be and the same hereby is confirmed and the petition dismissed with $20 costs and disbursements to the respondents.

Enter:

VINCENT A. MASSI,
Clerk.

Order of Supreme Court, New York County, Transferring Proceeding to Appellate Division

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

SPECIAL TERM—PART I

Index Number 14987—Year 1962

Present:

HON. SAUL S. STREIT, *Justice.*

HENRIETTA BRODY, ETC.,

Plaintiff,

against

MARTIN C. EPSTEIN, ETC.,

Defendants.

The following papers numbered 1 to 9, read on this motion, submitted this 7th day of September, 1962.

Calendar No. 129.

	Papers Numbered
Petition, Order to Show Cause and Affidavits Annexed	1 to 3
Answer and Exhibits Annexed	4 to 8
Exhibits—do not file—return to counsel	9

Upon the foregoing papers this matter is transferred to the Appellate Division pursuant to § 1296 C. P. A. Stay of 30 days granted to petitioner.

Dated: September 7, 1962.

S. S. S.,
J. S. C.

Authority's Order of Suspension

NEW YORK STATE LIQUOR AUTHORITY

Serial No. NY RL 14109

In the Matter of Proceedings to Suspend, Cancel or Revoke
License Number: 1 RL 14109

Issued to: HENRY BRODY dba ALBERT FRENCH RESTAURANT

Licensed Premises: 65 University Place
New York 3, N. Y.

Proceedings having been duly instituted pursuant to the provisions of the Alcoholic Beverage Control Law, (Chapter 478 of the Laws of 1934, as amended) to suspend, cancel

or revoke the above license issued to the licensee for premises located at the address stated above and the licensee having duly pleaded "no contest" to the charges contained in the notice of hearing or a hearing having been duly held by the State Liquor Authority in connection with said proceedings, and

Said proceedings having been duly considered by the State Liquor Authority at a meeting duly held on the 21st day of August, 1962, and due deliberation having been had thereon, and the Authority having duly adopted the findings of the hearing officer and duly found that the licensee violated Section 65 of the Alcoholic Beverage Control Law in that she sold, delivered or gave away or permitted to be sold, delivered or given away, alcoholic beverages to minors actually or apparently, under the age of 18 years, on September 16, 1961.

IT IS HEREBY ORDERED that the license aforesaid issued to said licensee for the above described premises be, and the same hereby is SUSPENDED* for the period hereinafter specified, and

IT IS FURTHER ORDERED that said licensee be, and hereby is, prohibited from trafficking in alcoholic beverages for the period beginning on the 10th day of September, 1962, at 10 A. M.; and ending on the 20th day of September, 1962, at 10 A. M.; and

IT IS FURTHER ORDERED that said licensee surrender said license forthwith to the State Liquor Authority or its duly

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* 25 days suspension (x days remitted on "No Contest" plea). 10 days to be served forthwith—Execution of balance of penalty, to wit 15 days will be temporarily deferred, subject to being put into effect in the event the Authority, within its sole discretion, is satisfied from information it receives or obtains that the licensee has not taken practical precautions to assure the proper conduct of the licensed premises since the date of any violation set forth above or within twelve months from the date hereof.

authorized representative, upon commencement of this said period of suspension, and

IT IS FURTHER ORDERED that failure by the licensee to comply with the terms of this order shall result in the cancellation or revocation of the said license in accordance with the provisions of the Alcoholic Beverage Control Law.

Dated August 22, 1962

STATE LIQUOR AUTHORITY
MARTIN C. EPSTEIN
Chairman

Certified by
WILLIAM E. BANDON, JR.
Secretary to the Authority

This order of suspension must be publicly displayed in the following manner:

If there be a door opening from the street into the licensed premises and a window facing the street upon which such door opens, such order shall be displayed in such window so that it may be readily seen from the street. If the licensed premises are otherwise located, such order shall be affixed to the door of the entrance to the premises.

Please take notice that any person who shall sell any alcoholic beverage during the suspension period shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $200 or by imprisonment in a county jail or penitentiary for a term of not more than six months or both. (Section 130 of the Alcoholic Beverage Control Law.)

To:
65 Univ. Pl.,
N. Y. 3, N. Y.
(Registered Mail)

NYC ABC BOARD
(Local Board)